

JULIO J. RAMOS (SBN NO. 189944)  
ramosfortrustee@yahoo.com  
 LAW OFFICES OF JULIO J. RAMOS  
 35 Grove Street, Suite 107  
 San Francisco, California 94102  
 Telephone: (415) 948-3015  
 Facsimile: (415) 469-9787

E-filing

Attorney for Plaintiff Don Cheung DBA Computer 5000

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CV 10 1794

Don Cheung DBA COMPUTER 5000, on  
 behalf of himself and all others similarly  
 situated,

Case No.:

Plaintiff,

CLASS ACTION COMPLAINT

v.

- 1.) Cartwright Act Section 16720  
 Cal. Bus. Prof. Code; and
- 2.) Unfair Competition Law Section  
 17200 Cal. Bus. Prof. Code

SONY CORPORATION;  
 SONY OPTIARC AMERICA INC.;  
 SONY OPTIARC INC.;  
 SONY NEC OPTIARC INC.;  
 HITACHI, LTD.;  
 LG ELECTRONICS INC.;  
 HITACHI-LG DATA STORAGE, INC.;  
 TOSHIBA CORPORATION;  
 SAMSUNG ELECTRONICS CO., LTD.;  
 TOSHIBA SAMSUNG STORAGE  
 TECHNOLOGY CORPORATION;  
 KNININKLIJKE PHILIPS ELECTRONICS  
 N.V.; LITE-ON IT CORP.; PHILIPS &  
 LITE-ON DIGITAL SOLUTIONS CORP.;  
 and PHILIPS & LITE-ON DIGITAL  
 SOLUTIONS, U.S.A.

Defendants.

JURY TRIAL DEMANDED

1 Plaintiff Don Cheung doing business as Computer 5000, is an indirect purchaser of Optical  
2 Disk Drive Products as defined below, individually and on behalf of the Class described below,  
3 brings this class action against Defendants for damages under the California Cartwright Act and the  
4 Unfair Competition Law Section 17200 of the State of California, and hereby demands trial by jury.  
5 Plaintiff alleges that Defendants conspired to fix, raise, maintain, and stabilize the price of Optical  
6 Disk Drive Products sold in the United States during the Class Period as defined below, including  
7 through price-fixing, bid-rigging and market allocation. As a result of Defendants' unlawful  
8 conduct, Plaintiff and members of the proposed Class paid higher prices for Optical Disk Drive  
9 Products than they would have paid in a competitive market.

### 10 NATURE OF THE ACTION

11 1. Sony, Toshiba and Hitachi alone account for about 60% of the United States market  
12 for optical disk drives used in computers and CD, DVD and Blue Ray players.

13 2. Optical disk drives are one of the largest growing markets in the electronics industry.  
14 In the State of California, almost all forms of home entertainment and data storage are on optical  
15 disks, either in CD format, DVD format, or now in Blu-Ray disc format. The Defendants and their  
16 co-conspirators in this case control over 90% of this multibillion dollar a year market. The  
17 defendants maintain substantial research and development facilities in the Silicon Valley of  
18 Northern California. Optical disk drives and the products derived from them are a substantial  
19 source of revenue for the Defendants. An investigation by the United States DOJ has been launched  
20 into the market for optical disk drives for anticompetitive conduct. These Defendants have a long  
21 history of engaging in anticompetitive conduct, having consistently sought to price fix a wide  
22 variety of products sold in the United States, such as Dynamic Random Access Memory  
23 ("DRAM"), Thin Film Transistor Liquid Crystal Display ("TFT-LCD") and Cathode Ray Tube  
24 ("CRT"). Through business meetings across the world, as well as at trade association meetings  
25 specific to their industry, these Defendants entered into an agreement and conspiracy to fix the price  
26 of Optical Disk Drives. When the price of ODD began to dip, the Defendants entered into an illegal  
27 agreement to prevent competitors from entering into the market and to keep prices at a  
28 supracompetitive level.

1           3.       This case arises out of a long-running conspiracy from at least October 1, 2005 until  
2 the present ("the Class Period"), among Defendants and their co-conspirators, with the purpose and  
3 effect of fixing, raising, maintaining and stabilizing prices for Optical Disk Drive Products sold  
4 directly to Plaintiff and other direct-purchasers who purchased such products in California.

5           4.       Defendants, the leading manufacturers of optical disk drives, and their co-  
6 conspirators formed an international cartel to illegally restrict competition in the Optical Disk Drive  
7 Product market, which included targeting and burdening indirect purchasers who made purchases in  
8 the California. During the Class Period, the conspiracy affected billions of dollars of commerce  
9 throughout California. The conspiracy included communications and meetings in which  
10 Defendants agreed to eliminate competition and fix the prices for Optical Disk Drive Products. As  
11 a result of Defendants' price-fixing conspiracy, Plaintiffs have been injured in their business and  
12 property by paying more for Optical Disk Drive Products than Plaintiffs otherwise would have paid  
13 in the absence of Defendants' conspiracy.

14           5.       An optical disk drive is a disk drive that uses laser light (or electromagnetic  
15 wavelength) to read and/or write data to or from an optical disk, such as a Compact Disc (CD), a  
16 Digital Video Disc (DVD), or the more recently-developed Blu-Ray Disc (BD). Optical disk drives  
17 are an integral part of stand-alone consumer electronics appliances such as CD players/recorders,  
18 DVD players/recorders, and Blu-Ray Disc players/recorders that are used to store and play music  
19 and movies. Optical disk drives are also widely used in computers to read and write data for a  
20 variety of uses, including software programs and data compilations, and to store and play music and  
21 video in much the same way as in stand-alone consumer electronics products with optical disk  
22 drives. As a result, in computers, optical disk drives (along with flash memory drives) have largely  
23 replaced "floppy" disk drives and the even-older tape drives that used magnetic disks or tapes to  
24 record and store data. In consumer electronics, products with optical disk drives (e.g. CD players  
25 and DVD players/recorders) have also displaced many of the consumer electronics products  
26 previously used to record and play music and video (e.g. cassette decks, VCRs).

27           6.       As used herein, Optical Disk Drive Products include both optical disk drives (e.g.  
28 CD drives, DVD drives, Blu-ray drives) manufactured by any of the named Defendants or their



1 affiliates, subsidiaries or co-conspirators, as well as products that contain optical disk drives (e.g.  
2 DVD players, video game consoles like the Sony PlayStation 3, personal computers with DVD  
3 drives) manufactured by any of the named Defendants or their affiliates, subsidiaries or co-  
4 conspirators. Many of the Defendants are not only the major manufacturers and sellers of optical  
5 disk drives, but they are also some of the largest manufacturers and sellers of computers and  
6 consumer electronics products that contain optical disk drives.

7         7. Plaintiff brings this action pursuant to Section 16720 of the California Business and  
8 Professions Code. Defendants and their coconspirators acted in violation of Section 16720 to fix,  
9 raise, stabilize and maintain prices of, and allocate markets for, Optical Disk Drive Products at  
10 prices in excess of what they would have been absent Defendants' and their coconspirators conduct  
11 as alleged herein.

12         7. Plaintiffs also bring this action pursuant to California's Unfair Competition Law  
13 Section 17200 of the California Business and Professions Code for violations of the California  
14 Cartwright Act, the Federal Sherman Act and unfair, unlawful, unconscionable and fraudulent acts.

15         Except where specifically stated otherwise, all allegations herein are on information and  
16 belief.

#### 17                                 **JURISDICTION AND VENUE**

18         8. Jurisdiction of this Court is founded under the Class Action Fairness Act of 2005, as  
19 the amount in controversy is over \$5 million and pursuant to 28 USC Sections 1332(d), 1453, 1711-  
20 1715.

21         9. Venue as to defendants is proper in this district pursuant to 15 U.S.C. §§ 15(a), 22,  
22 and 28 U.S.C. § 1391(b), (c), in that more than one defendant resides in the judicial district, is  
23 licensed to do business and/or is doing business in this judicial district. The interstate trade and  
24 commerce described herein has been carried out, in part, within this district.

25         10. Defendants are subject to this Court's jurisdiction because of their nationwide  
26 contacts and other activities, as well as their contacts and other activities with the State of  
27 California.

**PARTIES**

**A. Plaintiff**

11. Plaintiff Don Cheung DBA as Computer 5000 ("plaintiff") resides in San Francisco, California. He is in the business of repairing, buying and selling computer products to small businesses and individuals through his store located at 5000 Geary Street in the City and County of San Francisco.

12. During the Class Period, plaintiff indirectly purchased Optical Disk Drive Products from one or more Defendants or their controlled subsidiaries. As a result of the conspiracy, plaintiff has been economically injured in that the prices he paid for Optical Disk Drive Products have been artificially raised to anti-competitive levels by Defendants.

**B. Defendants**

13. Defendant **Sony Corporation** is a business entity organized under the laws of Japan, with its principal place of business located at 1-7-1, Konan, Minato-Ku, TKY 108-0075, Japan. During the Class Period, Sony manufactured, sold and/or distributed Optical Disk Drive Products throughout the United States.

14. Defendant **Sony Optiarc America Inc.**, formerly known as Sony NEC Optiarc Inc., is a wholly owned subsidiary of Sony Optiarc Inc. Sony Optiarc America Inc. is a Delaware corporation with its principal place of business located at 1730 N. First Street, San Jose, California 95112. Sony Optiarc America Inc. was originally established as a joint venture in April 2006 before Sony announced that it would take over NEC's 45% share on September 11, 2008. During the Class Period, Sony Optiarc America Inc. manufactured, sold and/or distributed Optical Disk Drive Products throughout the United States.

15. Defendant **Sony Optiarc Inc.** is a Japanese company with its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. During the Class Period, Sony Optiarc Inc. manufactured, sold and/or distributed Optical Disk Drive Products throughout the United States.

16. Defendant **Sony NEC Optiarc Inc.** was a Japanese company with its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. Defendant Sony NEC Optiarc Inc. was created on April 3, 2006 as a joint venture between defendants Sony Corp. and NEC Corp. in

1 which Sony Corp. had a 55% interest and NEC Corp. had a 45% interest. Sony Corp. purchased  
2 NEC Corp.'s interest in Sony NEC Optiarc Inc. in 2008 and renamed it Sony Optiarc Inc. During  
3 the Class Period, Sony NEC Optiarc Inc. manufactured, sold and/or distributed Optical Disk Drive  
4 Products throughout the United States.

5 17. Defendants Sony Corporation, Sony Optiarc America Inc., Sony NEC Optiarc Inc.,  
6 and Sony Optiarc Inc. are referred to individually and collectively herein as "**Sony.**"

7 18. Defendant **Hitachi, Ltd.**, is a business entity organized under the laws of Japan with  
8 its principal executive office at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8280, Japan.  
9 Hitachi, Ltd. controls an integrated global enterprise comprised of itself and other entities including  
10 defendant Hitachi-LG Data Storage, Inc. During the Class Period, Hitachi, Ltd., manufactured, sold  
11 and/or distributed Optical Disk Drive Products throughout the United States.

12 19. Defendant **LG Electronics Inc. ("LG")** is a business entity organized under the laws  
13 of Korea, with its principal place of business at 26/F Twin Tower South 20, Yeouido-Dong,  
14 Yeoungdeungpo-Gu, Seoul, SEO 150-721, South Korea. LG controls an integrated global  
15 enterprise comprised of itself and other entities including defendant Hitachi-LG Data Storage, Inc.  
16 During the Class Period, LG manufactured, sold and/or distributed Optical Disk Drive Products  
17 throughout the United States.

18 20. Defendant **Hitachi-LG Data Storage, Inc.** is a business entity organized under the  
19 laws of Japan with its principal place of business located at 4F MSC Center Building, 22-23 Kaigan  
20 3-Chome, Minato-Ku, Tokyo, Japan, 108-0022. Hitachi-LG Data Storage, Inc. is a joint venture  
21 formed in January 2001 and is owned 51% by defendant Hitachi and 49% by defendant LG. During  
22 the Class Period, Hitachi-LG Data Storage, Inc. manufactured, sold and/or distributed Optical Disk  
23 Drive Products throughout the United States.

24 21. Defendant **Toshiba Corporation ("Toshiba")** is a business entity organized under  
25 the laws of Japan, with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo  
26 105-8001, Japan. Toshiba Corp. controls an integrated global enterprise comprised of itself and  
27 other entities including defendant Toshiba Samsung Storage Technology Corp. During the Class  
28

1 Period, Toshiba manufactured, sold and/or distributed Optical Disk Drive Products throughout the  
2 United States.

3 22. Defendant **Samsung Electronics Co. Ltd. ("Samsung")** is a business entity  
4 organized under the laws of South Korea, with its principal place of business at Samsung Main  
5 Building 250, Taepyeongno 2-ga, Jung-gu, Seoul 100-742, Korea. Samsung controls an integrated  
6 global enterprise comprised of itself and other entities including defendant Toshiba Samsung  
7 Storage Technology Corp. During the Class Period, Samsung manufactured, sold and/or distributed  
8 Optical Disk Drive Products throughout the United States.

9 23. Defendant **Toshiba Samsung Storage Technology Corp.** is a business entity  
10 organized under the laws of Japan with its principal place of business located at Solid Square 580,  
11 Horikawacho, Saiwai-Ku, Kawasaki, KNG 212-0013, Japan. Toshiba Samsung Storage  
12 Technology Corp. is a joint venture formed in 2004 and owned 51% by defendant Toshiba and 49%  
13 by defendant Samsung. During the Class Period, Toshiba Samsung Storage Technology Corp.  
14 manufactured, sold and/or distributed Optical Disk Drive Products throughout the United States.

15 24. Defendant **Koninklijke Philips Electronics N.V. ("Philips")** is a business entity  
16 organized under the laws of The Netherlands, with its principal place of business at  
17 Groenewoudseweg 1, Eindhoven 5621 BA, The Netherlands. Philips controls an integrated global  
18 enterprise comprised of itself and other entities including defendant Philips & Lite-On Digital  
19 Solutions Corporation. During the Class Period, Philips manufactured, sold and/or distributed  
20 Optical Disk Drive Products throughout the United States.

21 25. Defendant **Lite-On IT Corporation ("Lite-On")** is a business entity organized  
22 under the laws of Taiwan, with its principal place of business at 12-15F, 392, Jui Kuang Road,  
23 Taipei City, TAP 11492, Taiwan. Lite-On controls an integrated global enterprise comprised of  
24 itself and other entities including defendant Philips & Lite-On Digital Solutions Corporation.  
25 During the Class Period, Lite-On manufactured, sold and/or distributed Optical Disk Drive Products  
26 throughout the United States.

27 26. Defendant **Philips & Lite-On Digital Solutions Corporation** is a business entity  
28 organized under the laws of Taiwan, and a joint venture between Koninklijke Philips Electronics



1 N.V. and Lite-On IT Corporation established in March 2007, with its principal place of business  
2 located at 16F, 392, Jui Kuang Road, Taipei City, TAP 11492, Taiwan. During the Class Period,  
3 Philips & Lite-On Digital Solutions Corporation manufactured, sold and/or distributed Optical Disk  
4 Drive Products throughout the United States.

5 27. Defendant **Philips & Lite-On Digital Solutions USA, Inc.** is a Delaware  
6 corporation with its principal place of business located at 42000 Christy Street, Fremont, California  
7 94538. During the Class Period, Philips & Lite-On Digital Solutions USA manufactured, sold  
8 and/or distributed Optical Disk Drive Products throughout the United States.

9 28. On information and belief, other partnerships, corporations, or other business  
10 entities, unknown to Plaintiff, are co-conspirators with Defendants in their unlawful restraint of  
11 trade. These other co-conspirators have facilitated, adhered to, participated in, and/or  
12 communicated with others regarding the conspiracy.

13 29. The conduct alleged herein was Defendants' conduct or actions ordered or done by  
14 Defendants' officers, agents, employees, or representatives, while engaged in the usual management  
15 of Defendants' business.

16 **AGENTS AND CO-CONSPIRATORS**

17 30. Various persons that are not named as Defendants herein have participated as co-  
18 conspirators in the violations alleged herein and have performed acts and made statements in  
19 furtherance thereof. Plaintiffs reserve the right to name some or all of these persons as Defendants  
20 at a later date.

21 31. Whenever in this complaint reference is made to any act, deed or transaction of any  
22 corporation, the allegation means that the corporation engaged in the act, deed or transaction by or  
23 through its officers, directors, agents, employees or representatives while they were actively  
24 engaged in the management, direction, control or transaction of the corporation's business or  
25 affairs.

26 32. Defendants are also liable for acts done in furtherance of the alleged conspiracy by  
27 companies they acquired through mergers and acquisitions.



33. Each of the Defendants named herein acted as the agent of, co-conspirator with, or joint venturer of the other Defendants with respect to the acts, violations and common course of conduct alleged herein. Each Defendant that is a subsidiary of a foreign parent acts as the United States agent for Optical Disk Drives and/or Optical Disk Drive Products made by its parent company.

#### **CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action both on behalf of himself, and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of the following class (the "Class").

All individuals and entities who, during the period from October 1, 2005 through the present (the "Class Period"), who purchased Optical Disk Drive Products in the State of California indirectly from the defendants or their subsidiaries. Excluded from the Class are defendants and their parents, subsidiaries, affiliates, and all governmental entities.

35. The Class is so numerous that joinder of all members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the members of the Class are geographically dispersed throughout the United States, and that joinder of all Class members would be impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff believes that there are, at least, thousands of members of the Class and that their identities can be learned from Defendants' books and records.

36. Plaintiff's claims are typical of the claims of the other members of the Class because plaintiff indirectly purchased Optical Disk Drive Products distributed by the defendants.

37. Plaintiff and the members of the Class indirectly purchased Optical Disk Drive Products at artificially maintained, non-competitive prices established by the actions of Defendants and their unnamed co-conspirators in connection with the restraint of trade alleged herein. Plaintiff and the members of the Class have all sustained damage in that they paid inflated prices for Optical Disk Drive Products due to Defendants' conduct in violation of federal law as complained of herein.

38. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and antitrust litigation.

1           39. Defendants have acted or refused to act on grounds generally applicable to the class,  
2 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to  
3 the Class as a whole.

4           40. Common questions of law and fact exist as to all members of the Class and  
5 predominate over any questions solely affecting individual members of the Class. Among the  
6 questions of law and fact common to the Class are:

- 7           (a) Whether Defendants engaged in a contract, combination or conspiracy among  
8 themselves to fix, maintain, or stabilize the price of Optical Disk Drive  
9 Products sold in the United States;
- 10           (b) Whether the conduct of Defendants caused the prices of Optical Disk Drive  
11 Products to be artificially inflated;
- 12           (c) Whether defendants engaged in a contract, combination, and/or conspiracy to  
13 restrict output of ODD Products sold in California;
- 14           (d) Whether Defendants' conduct caused injury to the members of the Class and,  
15 if so, the proper measure of damages;
- 16           (e) Whether plaintiff and the other members of the Class are entitled to, among  
17 other things, injunctive relief, and if so, the nature and extent of such  
18 injunctive relief; and
- 19           (f) Whether Defendants undertook actions to conceal the unlawful contract,  
20 combination or conspiracy described herein.

21           41. A class action is superior to other available methods for the fair and efficient  
22 adjudication of this controversy since joinder of all Class members is impracticable. The  
23 prosecution of separate actions by individual members of the Class would impose heavy burdens  
24 upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of  
25 the questions of law and fact common to the Class. A class action would achieve substantial  
26 economies of time, effort and expense, and would assure uniformity of decision as to persons  
27 similarly situated without sacrificing procedural fairness.

28           42.

**INTERSTATE TRADE AND COMMERCE**

43. During the Class Period, each Defendant, or one or more of its subsidiaries, sold Optical Disk Drive Products in the United States in a continuous and uninterrupted flow of interstate commerce and foreign commerce, including through and into this judicial district.

44. During the Class Period, Defendants collectively controlled a majority of the market for Optical Disk Drive Products, globally, in the United States and within this district.

45. The business activities of the Defendants substantially affected interstate trade and commerce in the United States and caused antitrust injury in the United States.

46. Sony Optiarc Inc., had sales of \$1.52 billion for the year ended March 2008, the last year for which Sony disclosed the unit's annual revenue.

47. Hitachi-LG Data Storage had revenue of \$2.4 billion in 2005, the last year for which figures are available, while Toshiba Samsung Storage forecast revenue of 250 billion yen in fiscal 2004 when it was established.

48. Samsung in 2008 estimated that the optical disk drive market for personal computers is 313 million units per year and the optical disk drive market for all other applications (e.g., automotive audio and video, personal video recorders, set top boxes, CD/ DVD players and recorders, camcorders, and game consoles) is 200 million units per year.

**FACTUAL ALLEGATIONS**

**A. Optical Disk Drive Technology**

49. Optical discs contain microscopic pits where data are stored. These pits are made from a crystalline metal alloy and are usually pressed into the disc in a spiral arrangement, starting at the center of the disc. Once a disc containing information is inserted into the optical disk drive, the disc spins while a lens inside the device guides a semiconductor laser beam over the disc and a photodiode detects the light reflected from the disc's bumps and pits. The laser moves outward from the center of the disc, scanning over the disc's surface. Then the photodiode reads the light's reflection as a binary code (a series of ones and zeros) that the computer translates into usable data. Changes in the intensity of the beams as the lasers hit the pits are detected and translated into electrical signals. The more pits that can be packed onto the disc, the more data the disc can store.

1 The pits are approximately 0.8 micrometers on CDs, 0.4 micrometers on DVDs, and 0.15  
2 micrometers on BDs. Reading the different disc formats requires the optical disk drive to have  
3 lasers of different wavelengths. Blu-ray disc players use a shorter wavelength laser, which is blue-  
4 violet, to read discs. Additional layers can be added to the disc as well, increasing storage capacity.  
5 In addition to reading discs, optical disk drives can write and rewrite on the disc, depending on the  
6 technology of the drive and accompanying disc.

7 50. When a recordable disc (e.g., CD-R, DVD-R or BD-R) is inserted into an optical  
8 disk drive that has the ability to record data, the optical disk drive's laser is used to selectively heat  
9 parts of the organic photosensitive dye layer. By exposing the disc to light with the laser, the  
10 reflective properties of the disc's surface change, which causes the photodiode to recognize these  
11 changes as bumps and pits and read the new information on the disc.

12 51. Optical disk drives include half-height and slim models. Half height optical disk  
13 drives are thicker and generally incorporated into desktop computer towers. Slim optical disk  
14 drives are thinner and generally incorporated into laptop computers. As laptop computers have  
15 become more popular with consumers, demand for slim optical disc drives has increased and is  
16 expected to overtake half-height demand over the next five years. An optical disk drive is a disk  
17 drive that uses laser light or electromagnetic waves as part of the process of reading or writing data  
18 to or from optical disks. Some drives can only read from disks, but other recent drives are  
19 commonly both readers and recorders. Recorders are sometimes called "burners" or "writers."  
20 Compact discs, DVDs, and Blu-Ray disks are common types of optical media which can be read  
21 and recorded by optical disk drives.

22 52. An optical drive is about the size of a thick book. The front of the drive has a small  
23 Open/Close button that ejects and retracts the drive bay door. This is how media like CDs, DVDs,  
24 and BDs are inserted into and removed from the drive. Where the disc drive is intended for internal  
25 use in a computer, the sides of the drive have pre-drilled, threaded holes for easy mounting in the  
26 drive bay in the computer case. In that case, the optical drive is mounted so the end with the  
27 connections faces inside the computer and the end with the drive bay faces outside. The back end  
28 of the optical drive generally contains a port for a cable that connects to the motherboard. Also here



1 is a connection for power from the power supply. Most optical drives also have jumper settings on  
2 the back end that define how the motherboard is to recognize the drive when more than one is  
3 present. These settings vary from drive to drive.

4 **B. Industry Background**

5 53. The optical disk was invented in 1958. In 1961 and 1969 patents were registered for  
6 the analog optical disk for video recording. In 1969 Philips began their first optical videodisk  
7 experiments. The first optical disk drive was invented with the creation of the audio compact disc  
8 (audio "CD"), which was jointly invented by Sony and Philips Electronics ("Philips") and intended  
9 to store analog video signals and store music and computer software. In 1972, Philips announced a  
10 technique for storing audio recordings on an optical disc with a small diameter. At the same time,  
11 Sony was exploring optically recording audio on a larger disc but was focusing on developing an  
12 error correction technique. In 1978, Sony and Philips agreed on a single format for the disc and the  
13 error correction method that would be used. The compact disc system was introduced to the public  
14 in Japan and Europe in 1982. Since the 1980s, several companies have created spin-offs of the CD  
15 project by covering specific CD-based applications and extending the previously established  
16 standards set by Sony and Philips.

17 54. According to reporters who cover the Optical Disk Drive Products market, the  
18 history of the industry, "although short, has been intense." The first-generation of optical disk  
19 drives used CDs that could store 650 megabytes of data, but for several years the CDs were  
20 available only in a read-only format (e.g. CD-ROMs). Once the standard of how to create a CD and  
21 an optical device that reads the information on the CD were established, CD-ROM drives began to  
22 penetrate the computer market. Optical disc drives have been in common use in computers since  
23 the 1990s, when CD-ROM drives became affordable for the average consumer. In the mid-1990s, a  
24 consortium of manufacturers developed the second generation of the optical disk, the DVD. The  
25 second-generation of drives used DVDs that could store 4.7 gigabytes, but DVDs were more  
26 quickly available in both a read-only format (e.g. DVD-ROMs) and a format that allowed both  
27 reading and recording (e.g. DVD-RWs, DVD-RAMs). The DVD was intended to store great  
28 amounts of data, including broadcast quality digital video. Optical disk drives using DVDs are

1 currently the most prevalent in both consumer electronics products and computers, but DVD drives  
2 are now being replaced by the third-generation of optical disk drives.

3 55. The third-generation of drives use Blu-Ray Discs (BDs) that can store in excess of  
4 20 gigabytes, and also have both read-only and read/record formats. (Toshiba developed and  
5 promoted a High-Definition ("HD")-DVD format for third-generation optical disk drives, but in  
6 June 2008 Toshiba announced that it would no longer develop or manufacture optical disk drive  
7 using HD-DVDs, and would instead use the Blu-Ray Disc format developed and promoted by  
8 Sony.) In 2006, the specifications for the third generation optical disc, the Blu-Ray Disc format,  
9 was finalized. The Blu-ray standard was developed by the Blu-Ray Disc Association, an industry  
10 group which included makers of consumer electronics, computer hardware, and motion pictures.  
11 The Blu-Ray format was designed to supersede the DVD format and dramatically improve on the  
12 quality and capacity of the DVD. The Blu-Ray optical disc was meant to be able to distribute high-  
13 definition video and support greater data storage capacity than the DVD. Afterwards,  
14 manufacturers began to develop optical disc drives for computers that could read and write both  
15 DVDs and Blu-Ray discs. The third generation optical disks, Blu-ray and HD-DVD began in  
16 development in 2000 and were meant for distributing high-definition video and support greater data  
17 storage capacities.

18 56. Throughout the industry's history, but especially after 2000, the optical disk drive  
19 market, which requires significant technical resources and advanced manufacturing capabilities, has  
20 been dominated by a small group of manufacturers. The industry has also consistently been faced  
21 with downward pricing pressures, including those resulting from the technological advances in  
22 optical disk drive technology described above. As the defendants hone their ability to manufacture  
23 these Optical Disk Drive Products more efficiently and at a lower cost, the price of this technology  
24 invariably begins to decline. However, the defendants, sensing that the price of Optical Disk Drive  
25 Products was declining, decided to collude and enter into a price fixing agreement in order to  
26 prevent prices from dropping too far.

27 57. Today, optical disk drives are a standard component on almost every computer used  
28 in the United States. Due to the increasing popularity of personal computers, hundreds of millions

1 of optical disk drives and Optical Disk Drive Products are shipped by defendants each year,  
2 generating billions of dollars in annual revenues. According to an IDC analysis, between 2004 and  
3 2008, worldwide optical disk drive shipments generated over \$45 billion in revenues. Digitimes  
4 research estimates that worldwide optical disk drive shipments increased at an annual rate of  
5 approximately 10%, exceeding 300 million by 2007. Between 2004 and 2008, the sale of Optical  
6 Disk Drive Products generated over \$45 billion in revenues. According to Gartner, by 2013, the  
7 optical disk drive market will grow to \$3.9 billion. Since the optical disk drives market is  
8 dominated by a group of manufacturers and it is oligopolistic in nature, the market is conducive to  
9 the collusive conduct alleged herein.

10 58. Optical disk drives are an integral part of stand-alone consumer electronics  
11 appliances such as CD players, DVD players/recorders, and Blu-Ray Disc players that are used to  
12 play (and record) music and movies. Following are pictures of consumer electronics products that  
13 contain optical disk drives:

14 59. Optical disk drives, such as CD-ROM (read-only memory) drives and DVD-RW  
15 (read/write) drives, are also widely used in computers to read and write data for a variety of uses,  
16 including software programs and data compilations, as well to store and play music and video in  
17 much the same way as in stand-alone consumer electronics products with optical disk drives.

18 Computer like this one contain optical disk drives:

19 60. Defendant Sony's President and Electronics CEO, Ryobi Chubachi, stated after the  
20 signing of a Memorandum of Understanding between Sony and NEC in 2005 that "Optical disc  
21 drives are key components for a broad range of devices and we are strategically focused our  
22 development resources in this sector." NEC's President Akinobu Kanasugi added that, "The market  
23 for high value-added drives to be integrated into PCs and consumer electronics products is rapidly  
24 expanding."

25 61. As the Optical Disk Drives Products market has changed, the Defendants have  
26 consistently remained leaders in the industry as a result of their conspiratorial acts. While the  
27 market for CD-ROMs has decreased, the market for Blu-Ray discs has grown exponentially as  
28 consumers shift towards the new format. In a 2008 consumer survey, 56% of customer respondents



1 would consider purchasing a Blu-Ray disc player if there was a significant price drop. The  
2 Defendants, acting in a non-conspiratorial manner, would have slashed their prices in an effort to  
3 obtain as large a share of the market as possible. However, by entering into a price-fixing  
4 agreement, each of the Defendants would be able to hold steady on their market share without any  
5 significant price reductions.

6 **C. Opportunity for Collusion**

7 62. During the Class Period, the optical disk drive industry has experienced several  
8 factors that have contributed to the opportunity for defendants and their co-conspirators to carry out  
9 their conspiracy, including but not limited to: (1) market concentration, (2) joint venture  
10 collaborations; (3) significant barriers to entry; (4) common trade associations and business  
11 organizations; and (5) the standardization of Optical Disk Drive Products.

12 **i. Market Concentration and Joint Ventures**

13 63. Since the Optical Disk Drive Products market is dominated by a group of  
14 manufacturers and it is oligopolistic in nature, the market is conducive to the collusive conduct  
15 alleged herein. According to published reports, during the Class Period, the Optical Disk Drive  
16 Products industry has been dominated by Defendants and their Co-Conspirators. During the Class  
17 Period the joint venture between Hitachi and LG Electronics, Hitachi-LG Data Storage, had a 27%  
18 market share; the joint venture between defendants Toshiba and Samsung, defendant Toshiba  
19 Samsung Storage Technology had a 20% market share; defendant Sony Optiarc America had a 17%  
20 market share; and Co-Conspirator Philips & Lite-On Digital Solutions Corporation had a 30%  
21 market share. Together these defendants and Co-conspirators control over 90% of the global  
22 market for Optical Disk Drive Products.

23 **ii. Joint Venture Collaboration**

24 64. In October of 2000 Hitachi, Ltd., and LG Electronics Inc. joined together to form  
25 Hitachi-LG Data Storage, Inc. ("HLDS"), a joint venture company for the development, design and  
26 marketing of optical disk drives. HLDS is majority owned by Hitachi in a 51/49 percent equity split  
27 with its headquarters in Tokyo.  
28



1           65. In April of 2003 Samsung Electronics and Toshiba Corporation signed a  
2 memorandum of understanding. In January 2004 Samsung and Toshiba concluded an agreement to  
3 integrate their optical disk drive businesses into a single entity. In April 2004 Toshiba Samsung  
4 Storage Technology Corp and its Korean subsidiary were launched to develop, market and design  
5 optical disk drives.

6           66. In April of 2006, Sony Corporation and NEC Corporation joined forces to create  
7 Sony NEC Optiarc Inc. At the formation of the joint venture, Sony had a 55% equity share and  
8 NEC 45% and was projected to capture 20% of the optical disk drive market. On September 11,  
9 2008, Sony purchased NEC Corp.'s interest in Sony NEC Optiarc, Inc., and renamed it Sony  
10 Optiarc, Inc.

11           67. In 2006, Lite-On IT acquired BenQ's Optical Disc Drive business to become the  
12 second largest optical disc drive manufacturer in the world. Lite-On bought out the BenQ shares  
13 under the deal and the joint venture was renamed Philips & Lite-On Digital Solutions.

14           68. The joint ventures of each of these companies allowed them to share and have access  
15 to each of their parent companies patents and technologies without the need to pay royalties.

16           **iii. Barriers to Entry**

17           69. There are significant manufacturing and technological barriers to entry into the  
18 optical disk drive industry. In order to compete in the optical disk drive industry, companies  
19 have to spend hundreds of millions of dollars in research and development, licensing, and  
20 manufacturing of products. Moreover, the ownership and control exerted by defendants over  
21 Optical Disk Drive Product technology and market share has allowed defendants to dictate who  
22 enters the market and at what cost. These barriers to entry have made it extremely difficult for  
23 smaller manufacturers of Optical Disk Drive Products to compete with defendants and  
24 overcome the effects of economies of scale. Accordingly, the financial structure of the optical  
25 disk drive industry allowed defendants to implement their antitrust conspiracy by eliminating  
26 competition and artificially stabilizing the prices of Optical Disk Drive Products without losing  
27 market share.

28           70. Price-fixing and market allocation are easier to attain within a highly

1 concentrated, fungible market for which adequate substitutes do not exist. All of these factors  
2 facilitate the implementation and maintenance of an antitrust conspiracy such as that perpetrated  
3 by Defendants and alleged herein. The facts do not support a finding of conscious parallelism.  
4 Instead, it is evident from the facts that Defendants communicated and conspired to the  
5 detriment of consumers of Optical Disk Drive Products.

6 **iv. Trade Associations and Business Organizations**

7 71. Defendants acted to prevent downward pricing pressures from causing Optical Disk  
8 Drive Products to be sold at truly competitive prices, through means including price-fixing, bid-  
9 rigging and market allocation.

10 72. Various industry trade organizations or events facilitated Defendants' Optical Disk  
11 Drive Products cartel activities. Defendants participated in many of those meetings and events to  
12 discuss Optical Disk Drive Products pricing and production with the purpose and effect of raising,  
13 fixing and stabilizing Optical Disk Drive Products prices. Such meetings occurred at or through the  
14 following industry trade associations and events:

15 73. The Optical Storage Technology Association (OSTA), an international trade  
16 association formed in 1992 to promote the use of recordable optical technologies and products, and  
17 whose membership includes optical product manufacturers who represent more than 85 percent of  
18 worldwide writable optical product shipments, including LG and Sony.

19 74. The last meeting of the OSTA took place between March 16-18, 2009 at the Pacific  
20 Business Centers at 19925 Stevens Creek Blvd, Cupertino, CA 95014. At that meeting, in which  
21 the Defendants were present, they were able to meet and communicate regarding the price-fixing  
22 conspiracy. Under the guise of an industry forum, the Defendants exchanged sensitive price  
23 information and ensured that all of them charged the same price for Optical Disk Drive Products.

24 75. The DVD Forum, a global group of hardware manufacturers, software firms and  
25 content providers formed in 1997 to promote and improve standards for the DVD format and  
26 products associated with that format. Hitachi, LG, Lite-On, NEC, Philips, Samsung, Sony, and  
27 Toshiba are all members of the DVD Forum.

1           76.     The Steering Committee of the DVD Forum last met on September 10, 2009 at the  
2 Universal Hilton Hotel in Los Angeles, California. Defendant Toshiba was the chair of that  
3 Steering Committee meeting. At that meeting, the members of the conspiracy and other co-  
4 conspirators communicated with each other about the conspiracy and agreed to continue to fix the  
5 price of Optical Disk Drive Products sold across the world, including in the United States.

6           77.     The Blu-ray Disc Association, a worldwide group formed in 2005 to promote the  
7 Blu-ray Disc format and products associated with that format, with members including Hitachi, LG,  
8 NEC, Philips, Samsung, Sony, Toshiba.

9           78.     Defendants Sony, LG, and Hitachi are all founding board members of the Blu-ray  
10 Disc Association which is an industry consortium that develops and licenses Blu-ray Disc  
11 Technology. The Blu-ray Disc Association was established by the defendants to establish  
12 standardized formats and cross license technology.

13           79.     Defendants Sony, LG, Hitachi, and Samsung all participated in the first meeting of  
14 Blu-ray Disk patent owners in Los Angeles, California on July 6-7, 2006. The stated purpose of the  
15 event was to create joint licensing agreements amongst the participating optical disk drive  
16 manufacturers.

17           80.     The International Consumer Electronics Show, the world's largest consumer  
18 electronics show, held annually. The 2010 International Consumer Electronic Show took place  
19 from January 7-10, 2010 at the Venetian in Las Vegas, Nevada. One of the topics of conversation  
20 at the show was the DOJ investigation into the Optical Disk Drive Products. Members of the  
21 conspiracy communicated with each other about the conspiracy during the 2010 International  
22 Consumer Electronics Show.

23           81.     The Optical Storage Symposium (OSS), a worldwide conference held annually from  
24 2001-07.

25           82.     The conduct of the "business" of these organizations gave Defendants and their co-  
26 conspirators the cover needed to contact one another to communicate competitive information.

27           **v.     Standardization of Optical Disk Drive Products**

28           83.     Since its inception in the 1970s, the optical disk drive industry has been typified by

1 standardization of discs (e.g., CD-ROMs, DVD-ROMs) and Optical Disk Drive Products driven by  
2 industry participants and a variety of industry-related organizations such as ECMA International,  
3 the International Standardization Organization ("ISO"), and the International Electrotechnical  
4 Commission ("IEC"). These organizations and their members are dedicated to "standardizing the  
5 use of information communication technology and consumer electronics."

6 84. The optical disk drive industry is also subject to patents and intellectual property  
7 rights which require adoption of standardized product specifications.

8 85. The standardization of the Optical Disk Drive Products industry provided defendants  
9 with the mechanism to implement, enforce, and oversee their anticompetitive conspiracy to fix the  
10 price of Optical Disk Drive Products. Furthermore, as a result of this standardization, Optical Disk  
11 Drive Products are commodity products, and buyers make decisions to purchase such products  
12 based largely, if not exclusively, on price.

#### 13 **D. History of Collusion**

##### 14 **i. Previous Antitrust Violations**

15 86. Defendants have been the subject of multiple government investigations for their  
16 cartel activity in recent years. For example, Samsung admitted guilt and paid a \$300 million fine  
17 following an investigation by the DOJ into price-fixing among manufacturers of dynamic random  
18 access memory ("DRAM") computer chips.

19 87. Many of the Defendants named herein, have a long history of collusion, and, are  
20 either currently involved in worldwide investigations into other technology-related products, or  
21 have admitted to participating in cartels involving technology-related products.

22 88. In November of 2007, the EU fined Sony and various related entities and the Hitachi  
23 Maxell Limited joint venture \$110 million for fixing the prices of professional videotapes sold in  
24 Europe between 1999 and 2002. Similarly, Hitachi and Toshiba were fined by the European  
25 Commission for their roles in a conspiracy to control prices and allocate market shares in the market  
26 for gas-insulated switchgear between 1988 and 2004.



1           89. More recently, the DOJ and the European Commission ("EC") have commenced  
2 investigations of Samsung, Toshiba, LG and Hitachi, among others, concerning collusion among  
3 manufacturers of thin-film transistor liquid crystal displays ("TFT-LCDs").

4           90. In December of 2008, the Department of Justice ("DOJ") announced that LP  
5 Display, a joint venture between LG and Philips, would plead guilty to a DOJ indictment alleging  
6 antitrust price-fixing allegations with respect to TFT-LCDs. It has agreed to pay a \$400 million fine.

7           91. On March 10, 2009, the DOJ announced that Hitachi Displays had pled guilty to  
8 participation in the price-fixing conspiracy involving TFT-LCDs and had agreed to pay a \$31  
9 million fine.

10           92. Although it has not been publicly acknowledged by Samsung, it is widely believed  
11 that defendant Samsung Electronics Co. Ltd. is in the U.S. DOJ leniency program with respect to  
12 the DOJ's investigation into the market for TFT-LCD, meaning that it has admitted its participation  
13 in the cartel. The TFT-LCD investigation is ongoing, and Toshiba Corporation, as well as other  
14 entities, remain under investigation. Such criminal investigation is being conducted by the San  
15 Francisco office of the DOJ's Antitrust Division.

16           93. As in the TFT-LCD industry, many of the defendants here are not just the major  
17 manufacturers and sellers of the price-fixed product, but they are also the major manufacturers and  
18 sellers of the consumer electronics and computer products that contain the price-fixed product. For  
19 example, the LG and Samsung entities manufactured and sold both TFT-LCD panels as well as  
20 TFT-LCD flat panel televisions. Here LG and Samsung (and Hitachi, Toshiba, Philips, Lite-On and  
21 Sony) manufacture and sell both optical disk drives (e.g. DVD drives) and finished products  
22 containing those drives (e.g. DVD players, laptop computers).

23           94. On October 7, 2009 in a cease and desist order, The Japan Fair Trade Commission  
24 levied \$37.4 million in fines against five companies, including LG Philips Displays Korea Co. and  
25 an arm of South Korea's Samsung group and their affiliates for alleged participation in a price-  
26 fixing cartel for cathode ray tubes.

27           95. The optical disk drive industry has a similar oligopoly structure to that of the TFT-  
28 LCD, DRAM and CRT industries. The Defendants' entry into price-fixing agreements in those

1 markets (which include many of the same foreign players) supports the DOJ's investigation and  
 2 other evidence showing the existence of an anticompetitive conspiracy in the Optical Disk Drive  
 3 Products market.

4 96. The established illegal conduct of Hitachi, LG and Samsung (as well as Philips and  
 5 Sony) in a wide variety of product markets across the world, including the United States, is  
 6 illustrative of Defendants' respective corporate cultures which encourage illegal activities aimed at  
 7 furthering the company's bottom line at the expense of consumers.

8 97. For example, in November of 2007, Kim Yong Chul, the former chief lawyer for  
 9 Samsung, admitted that the company "instructed me to commit crimes." Chul continued, "[a] basic  
 10 responsibility for all Samsung executives is to do illegal lobbying, buying people with money."  
 11 Chul also acknowledged that he fabricated court evidence on behalf of the company and its  
 12 executives, and several Samsung executives have recently been convicted of bribery and other  
 13 white collar crimes.

14 **ii. Antitrust Violations concerning Optical Disk Drive Products**

15 98. Recently, defendants disclosed and news organizations reported that there is  
 16 currently a worldwide investigation by antitrust enforcement authorities into violations of antitrust  
 17 laws and other anticompetitive practices into the market for optical disk drives. In October of 2009,  
 18 the United States DOJ acknowledged that it had commenced an investigation into anticompetitive  
 19 conduct in the optical disk drive industry, and that in connection with that investigation it had  
 20 served subpoenas on defendants Sony Optiarc America, Hitachi-LG, and TSST. At the same time,  
 21 at least one defendant acknowledged that foreign antitrust enforcement agencies were also  
 22 investigating the optical disk drive industry.

23 99. For example, on October 23, 2009, Sony Corporation disclosed the following in a  
 24 Form 6-K it filed with the SEC:

25 Sony Corporation said today that its U.S. subsidiary, Sony Optiarc America Inc.,  
 26 has received a subpoena from the U.S. Department of Justice (DOJ) Antitrust  
 27 Division seeking information about its optical disk drive business. Sony  
 28 understands that the DOJ and agencies outside the United States are investigating  
 competition in optical disk drives.

1 On October 26, 2009, news sources reported that other companies, including Toshiba, Hitachi,  
2 Samsung and LG have received DOJ subpoenas. According to one of the news articles, an  
3 unnamed "source said the department began the probe in recent months, investigating disk-drive  
4 makers for possible price-fixing, bid-rigging and allocation of markets."

5 100. Sony has acknowledged that it believes the request for information from the U.S.  
6 Department of Justice is part of a wider review of competition in the disk drive market by the DOJ  
7 and competition authorities in other countries.

8 101. On October 27, 2009, Hitachi Ltd. and Toshiba Corporation confirmed that, like  
9 Sony Corporation, their optical disk drive operations in the United States received subpoenas from  
10 the U.S. Department of Justice in a widening investigation into potential antitrust violations.  
11 Additionally, they acknowledged that they were also under investigation by European Union and  
12 Singaporean antitrust regulators.

13 102. On October 27, 2009, a United States DOJ spokeswoman, Gina Talamona confirmed  
14 that, "[t]he antitrust division is investigating the possibility of anticompetitive practices in the  
15 optical disc drive industry."

16 103. In its 2009 annual report Philips revealed that it and PLDS are also the subject of  
17 international investigations. The report stated:

18 On October 27, 2009, the Antitrust Division of the United States  
19 Department of Justice confirmed that it had initiated an investigation into possible  
20 anticompetitive practices in the Optical Disc Drive (ODD) industry. Philips Lite-  
21 On Digital Solutions Corp. (PLDS), a joint venture owned by the Company and  
22 Lite-On IT Corporation, as an ODD market participant, is included in this  
23 investigation. PLDS is also subject to similar investigations outside the US  
24 relating to the ODD market. PLDS and Philips intend to cooperate with the  
25 authorities in these investigations.

26 104. On October 28, 2009, it was announced that two of the major players in the Optical  
27 Disk Drive Products market, Sony and Philips, were fined by the a foreign antitrust enforcement  
28 agency, the Taiwan Fair Trade Commission, for their anticompetitive business practices in  
connection with their abuse of monopoly power in the licensing of the technology for CD-Rs, the  
discs that go into optical disk drives.



1           105. It is significant that defendants' anticompetitive behavior has been the subject of a  
2 criminal grand jury investigation by the DOJ. In order for the DOJ to institute a grand jury  
3 investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed and  
4 prepare a detailed memorandum to that effect. *See* Antitrust Grand Jury Practice Manual, Vol. 1,  
5 Ch. I.B.1 ("[i]f a Division attorney believes that a criminal violation of the antitrust laws has  
6 occurred, he should prepare a memorandum requesting authority to conduct a grand jury  
7 investigation.") Furthermore, following a review of the memorandum, the request for a grand jury  
8 must be approved by the Assistant Attorney General for the Antitrust Division, based on the  
9 standard that a criminal violation may have occurred. *See id.* In addition, the fact that the DOJ  
10 Antitrust Division investigation is criminal, as opposed to civil, is significant as well. The Antitrust  
11 Division's "Standards for Determining Whether to Proceed by Civil or Criminal Investigation"  
12 state: "[i]n general, current Division policy is to proceed by criminal investigation and prosecution  
13 in cases involving horizontal, per se unlawful agreements such as price fixing, bid rigging and  
14 horizontal customer and territorial allocations." *See* Antitrust Division Manual, Chapter III.C.5.  
15 Accordingly, the existence of a criminal investigation into the ODD industry supports the existence  
16 of the conspiracy alleged herein.

17           106. On or about October 1, 2005, the exact date being unknown to plaintiff, Defendants  
18 entered into a continuing contract, combination or conspiracy to unreasonably restrain trade and  
19 commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

20           107. Defendants participated in meetings and conversations to discuss the price of Optical  
21 Disk Drive Products sold in the United States.

22           108. Defendants agreed during those meetings and conversations to charge prices at  
23 specified levels and otherwise to fix, increase, stabilize and/or maintain prices of Optical Disk  
24 Drives sold in the United States.

25           109. Defendants agreed to sell Optical Disk Drive Products at the agreed upon prices.

26           110. Defendants sold Optical Disk Drive Products to various customers throughout the  
27 United States at artificially inflated prices.  
28



111. The conspiracy alleged herein had and continues to have the following effects, among others.

112. As a result of the illegal conspiracy, prices charged to plaintiff and the Class for Optical Disk Drive Products have been raised, fixed, maintained or stabilized at artificially inflated, non-competitive levels.

113. As a result of the illegal conspiracy, plaintiff and the Class have been deprived of the benefits of free, open and unrestricted competition in the market for Optical Disk Drive Products.

114. As a result of the illegal conspiracy, competition in establishing the prices paid in the United States and worldwide for Optical Disk Drive Products has been unlawfully restrained, suppressed and eliminated.

115. By reason of the violations of Section 1 of the Sherman Act and Section 4 of the Clayton Act, plaintiff and the members of the Class have sustained injury. As a direct result of Defendants' conduct, the injury sustained by plaintiff and the Class is the payment of supracompetitive prices for Optical Disk Drive Products. This is an antitrust injury of the type that the federal laws were meant to punish and prevent.

#### **FRAUDULENT CONCEALMENT**

116. Plaintiff and members of the Class did not discover and could not discover through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until October 26, 2009 when it was first publicly reported that manufacturers of optical disk drives were under investigation by antitrust authorities in the United States, and elsewhere in the world, for anticompetitive conduct.

117. Because Defendants' agreements, understandings, and conspiracies were kept secret until October 26, 2009, Plaintiff and members of the Class before that time were unaware of Defendants' unlawful conduct alleged herein, and they did not know before that time that they were paying artificially high prices for Optical Disk Drive Products throughout the United States during the Class period.

118. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

119. By their very nature, Defendants' price fixing conspiracy was inherently self-concealing. The optical disk drives industry is not exempt from antitrust regulation, and thus, before October 26, 2009, Plaintiff reasonably considered it to be a well-regulated competitive industry.

120. In the context of the circumstances surrounding Defendants' pricing practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a reasonable person that Defendants' pricing was conspiratorial. Accordingly, a reasonable person under the circumstances would not have been alerted to investigate the legitimacy of Defendants' Optical Disk Drive Products prices before October 26, 2009.

121. Plaintiff and members of the Class could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their contract, combination or conspiracy.

122. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiff and members of the Class had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until October 26, 2009, when reports of the investigations into price fixing in the optical disk drives industry were first publicly disseminated.

123. None of the facts or information available to Plaintiff and members of the Class prior to October 26, 2009, if investigated with reasonable diligence, could or would have led to the discovery of the conspiracy alleged herein prior to October 26, 2009.

124. Defendants also consummated affirmative acts of concealment of the conspiracy, including, inter alia, periodically issuing press statements falsely asserting that Optical Disk Drive Products were competitively priced. For example, on June 4, 2007 Sony issued a press release stating, "The player (Sony's Blu-Ray Disk Player) gives a broader consumer segment the opportunity to experience the exceptional quality of Blu-ray format at a **competitive price.**" (emphasis added)

125. As a result of Defendants' fraudulent concealment of their conspiracy, the running of

1 any statute of limitations has been tolled with respect to any claims that Plaintiff and members of  
 2 the Class have as a result of the anticompetitive conduct alleged in this Complaint.

3 **First Claim**  
 4 **(Violation of the California Cartwright Act)**

5 126. Plaintiff realleges the paragraphs set forth above and incorporate them  
 6 herein as if fully alleged.

7 127. Defendants' acts in violation of the Cartwright Act and  
 8 other laws as alleged herein were carried out, centered in, effectuated from and  
 9 perfected largely within the State of California. Defendants' conduct within  
 10 California injured all members of the Class throughout the United States. As a  
 11 result, this claim for relief under California law is brought on behalf of all members  
 12 of the Class, regardless of their residence and/or domicile.

13 128. From at least as early as October 1, 2005, and continuing until the  
 14 present, Defendants and their co-conspirators entered into and engaged in a  
 15 continuing conspiracy in violation of Section 16720 of the California Business and  
 16 Professional Code. Defendants and their coconspirators acted in violation of  
 17 Section 16720 to fix, raise, stabilize and maintain prices of, and allocate markets  
 18 for, Optical Disk Drive Products at prices in excess of what they would have been  
 19 absent Defendants' and their coconspirators conduct as alleged herein.

20 129. The violations of Section 16720 of the California Business and  
 21 Professions Code as alleged herein comprised a continuing unlawful trust and  
 22 concert of action between and among the Defendants and their coconspirators.  
 23 The substantial terms of this unlawful trust were to fix, raise, maintain and stabilize  
 24 the prices of, and to allocate markets for, Optical Disk Drive Products. In carrying out this illicit  
 25 trust and conspiracy, Defendants and their  
 26 coconspirators:

- 27 A. fixed, raised, maintained, and stabilized the price of Optical  
 28 Disk Drive Products;

1 B. allocated markets for Optical Disk Drive Products among  
2 themselves;

3 C. submitted rigged bids for the award and performance of certain  
4 Optical Disk Drive Products contracts; and

5 D. allocated amongst themselves the production of Optical Disk  
6 Drive Products.

7 Defendants' and their co-conspirators' actions caused:

8 A. a restraint of price competition in the sale of Optical Disk Drive  
9 Products in the State of California and throughout the United States;

10 B. the fixing of artificially high, non-competitive prices for  
11 Optical Disk Drive Products sold by Defendants and their co-  
12 conspirators in the State of California and throughout the  
13 United States; and

14 C. Plaintiff and the Class to be deprived of the benefit of free and  
15 open competition in the pricing of Optical Disk Drive Products.

16 Plaintiff and the other members of the Class paid higher prices for  
17 Optical Disk Drive Products than they would have paid in the absence of  
18 Defendants' and their co-conspirators' acts.

19 130. Plaintiff and the members of the Class have been injured in their  
20 business and property as a direct and proximate result of Defendants' unlawful  
21 conduct because they paid more for products containing Optical Disk Drive  
22 Products than they otherwise would have paid but for Defendants' unlawful  
23 conduct.

24 131. Plaintiff and the Class seek treble damages and the costs of the suit,  
25 including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and  
26 Professions Code, as a result of Defendants' and their co-conspirators'  
27 violations of Section 16720 of the California Business and Professions Code.



**Second Claim**  
**(Violation of the California Unfair Competition Law)**

132. Plaintiff realleges the paragraphs set forth above and incorporate them herein as if fully alleged. Defendants' acts in violation of federal and state antitrust laws and other laws as alleged herein were carried out, centered in, effectuated from and perfected largely within the State of California. Defendants' conduct within California injured all members of the Class throughout the United States. As a result, this claim for relief under California law is brought on behalf of all members of the Class, regardless of their residence and/or domicile.

133. Beginning no later than October 1, 2005 and continuing through the present, Defendants and their co-conspirators violated Section 17200 by engaging in acts of unfair competition as alleged herein.

134. This Claim is asserted pursuant to Sections 17203 and 17204 of the California Business and Professions Code.

135. Plaintiff and the class seek restitution from Defendants for the acts alleged herein which violate Section 17200 of the California Business and Professions Code. The acts of Defendants and their co-conspirators as set forth herein are unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200 and include, but are not limited to, the following:

A. Violations of Section I of the Sherman Act;

B. Violations of Section 16720, et seq., of the California Business and Professions Code;

C. Other acts by Defendants and their co-conspirators as alleged herein which are otherwise unfair, unconscionable, unlawful or fraudulent within the meaning of Section 17200, California Business and Professions Code; and. Plaintiff and each of the Class members are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which Defendants may have obtained as a result of such business acts or practices.

136. Defendants' and their co-conspirators' unlawful and unfair business practices are believed to be continuing and there is no reason to believe that Defendants will not cease such conduct.

137. The acts of Defendants and their co-conspirators as alleged herein have caused and continue to cause Plaintiff and the members of the Class to pay higher prices for Optical Disk Drive Products than they would have paid but for these acts. Plaintiff and the members of the Class suffered injury in fact and lost money or property as a result of such unfair competition. This conduct violates § 17200 of the California Business and Professions Code.

138. Defendants and their co-conspirators have been unjustly enriched, and Plaintiff and the Class are entitled to relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for relief as follows:

(1) That the Court determine that this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as a class representative and Plaintiff's counsel be appointed as counsel for the Class;

(2) That the unlawful contract, combination or conspiracy alleged be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of the Cartwright Act and in violation of the Unfair Competition Law Section 17200;

(3) That Plaintiff and the Class recover damages, as provided by law, determined to have been sustained as to each of them, in an amount to be trebled in accordance with the antitrust laws, and that judgment be entered against Defendants on behalf of Plaintiff and of the Class;

(4) That plaintiff and the Class recover treble damages, as provided by law;

1 (5) That Plaintiff and the Class recover their costs of the suit, including attorneys' fees,  
2 as provided by law;

3 (6) That Defendants, their subsidiaries, affiliates, successors, transferees, assignees and  
4 the respective officers, directors, partners, agents, and employees thereof and all other persons  
5 acting or claiming to act on their behalf be permanently enjoined and restrained from continuing  
6 and maintaining the combination, conspiracy, or agreement alleged herein;


7 (7) That Plaintiff and members of the Class be awarded pre-judgment and post-judgment  
8 interest, and that such interest be awarded at the highest legal rate from and after the date of service  
9 of the initial complaint in this action; and

10 (8) For such other and further relief as is just under the circumstances.

11 **JURY TRIAL DEMANDED**

12 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury  
13 of all of the claims asserted in this Complaint so triable.

14 Dated: April 26, 2010

15   
16 JULIO J. RAMOS (SBN No. 189944)  
17 ramosfortrustee@yahoo.com  
18 LAW OFFICES OF JULIO J. RAMOS  
19 35 Grove Street, Suite 107  
20 San Francisco, California 94102  
21 Telephone: (415) 948-3015  
22 Facsimile: (415) 469-9787

23  
24  
25  
26  
27  
28 Attorney for Plaintiff Don Cheung DBA Computer  
5000